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Aurora World, Inc.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

AURORA WORLD, INC.,

Plaintiff,

vs.

TY, INC.,

Defendants.

CASE NO. CV09-8463 MMM (Ex)

**DECLARATION OF MONICA  
FITZHUGH IN SUPPORT OF AURORA  
WORLD, INC.'S MOTION FOR  
PRELIMINARY INJUNCTION**

[Filed concurrently with Notice of Motion and  
Motion for Preliminary Injunction; Memorandum of  
Points and Authorities Declarations of Michael  
Kessler and Wendy M. Mantell, [Proposed]  
Injunction]

Date: TBD

Time: TBD

Courtroom: 780

Judge: Hon. Margaret M. Morrow

**DECLARATION OF MONICA FITZHUGH**

I, Monica Fitzhugh, declare as follows:

1. I am the Director of Product Development at Aurora World, Inc. ("Aurora World"). I submit this declaration in support of Aurora World's Motion for Preliminary Injunction. I have personal knowledge of the following facts, and if called to testify in this action, could and would testify as to the truth of such facts.

2. Since the establishment of the company, Aurora World has focused on its top quality and innovative design for both play and collectable toys.

3. In the Spring of 2006, Aurora World began developing a line of plush animals called YooHoo & Friends. The YooHoo & Friends were developed and created in house by Aurora World's designers located in Seoul, Korea. Attached hereto as **Exhibit A** are true and correct copies of images of the YooHoo & Friends plush toys.

4. Aurora World showed prototypes of the YooHoo plush toy products at the Atlanta Gift Show, a trade show held in Atlanta, Georgia, in July 2006.

5. Thereafter, beginning in January 2007 and continuing throughout the year, Aurora World commenced a full scale launch of the YooHoo & Friends products and brand.

6. The YooHoo & Friends characters, which include the "YooHoos" and others, are based on animals, some of which are endangered species. For example, "YooHoo" is a bush baby. Other characters include a penguin, panda, and koala.

7. In April 2008, Aurora World launched a promotional website to help market and advertise the YooHoo & Friends brand, located at [www.yoohoofriends.com](http://www.yoohoofriends.com). The website features the YooHoo & Friends characters living a virtual world. The website introduces the YooHoo & Friends characters, tells a small background story about each character and its corresponding animal, and contains games and other attractions. Attached hereto as **Exhibit B** are true and correct copies of printouts from the YooHoo & Friends website, depicting the YooHoo & Friends.

8. The YooHoo & Friends plush toys are designed with large heads, and distinctive large, round eyes, with large black pupils and a colored border. The

1 YooHoo & Friends' eyes are specially tooled by Aurora World to create their unique  
2 look and colors. The YooHoo & Friends' eyes are placed close together on the front of  
3 each character's face. The individual characters also possess distinctive and  
4 recognizable stitching patterns, expressions, and color elements.

5 9. Aurora World also has created and sold specialty YooHoo & Friends  
6 products for particular seasons or holidays, such as Easter, Valentine's Day, and  
7 graduation. Attached hereto as **Exhibit C** are true and correct copies of images of  
8 examples of individual YooHoo & Friends that were created for particular seasons or  
9 holidays.

10 10. In addition to the plush toys and website, the YooHoo & Friends products  
11 include an animation series currently on the air in several international markets and  
12 planned for the United States market, and other non-plush peripheral items such  
13 notepads, stationary items, and key chains. Aurora World also is pursuing co-marketing  
14 opportunities with several nationwide retail chains and recreation sites to expand its  
15 successful YooHoo & Friends brand.

16 11. Since launching the YooHoo & Friends brand, Aurora World has been  
17 engaged in the business of designing, manufacturing, developing, and marketing the  
18 YooHoo & Friends characters. The YooHoo & Friends products have been marketed,  
19 distributed, offered for sale, and sold throughout the world, including in Korea, the  
20 United Kingdom, and Saudi Arabia, among other places, and throughout the United  
21 States.

22 12. Aurora World also has promoted the YooHoo & Friends brand by, for  
23 example, appearing at trade shows and advertising in trade magazines. Aurora World  
24 also has created several marketing brochures, a catalog to present to its potential retail  
25 customers, and has developed a costume program. Aurora World also has created retail  
26 displays for its plush products. Attached hereto as **Exhibit D** are images of the Aurora  
27 World YooHoo & Friends advertising, brochures, signage, and retail displays.

28 13. On March 12, 2007, Aurora World obtained United States copyright  
registration number VA1-406-420 for the "YooHoo" soft sculpture toys. Attached

1 hereto as **Exhibit E** is a true and correct copies of Aurora World's copyright  
2 registration for the "YooHoo" soft sculpture toys. Aurora World has obtained nine other  
3 copyright registrations for its various other YooHoo & Friends products and characters.  
4 Attached hereto as **Exhibit F** are true and correct copies of Aurora World's additional  
5 copyright registrations for various YooHoo & Friends products and characters.

6 14. Since 2007, Aurora World has been using the trademark YooHoo &  
7 Friends in connection with the advertising and sale of its YooHoo & Friends plush toys  
8 and products in interstate, intrastate, and foreign commerce.

9 15. The YooHoo & Friends products and brand name YOOHOO (the  
10 "YOOHOO Mark") have also been registered internationally. Attached hereto as  
11 **Exhibit G** are a true and correct copies of Aurora World's international intellectual  
12 property registrations for the YooHoo & Friends products and YOOHOO Mark.

13 16. In addition, Aurora World currently has an application to register the  
14 YOOHOO Mark pending with the United States Patent and Trademark Office,  
15 application serial number 79066968. Attached hereto as **Exhibit H** is a true and correct  
16 copy of the record of Aurora World's application to register the YOOHOO Mark with  
17 the United States Patent and Trademark Office, printed from the United States Patent  
18 and Trademark Office website.

19 17. Aurora World maintains strict quality control and physical control over the  
20 manufacture and distribution of the YooHoo & Friends products. All of the YooHoo &  
21 Friends plush toys other than key chains are manufactured in Aurora World's own  
22 factory in Junan, China. Hence, the process is tightly controlled by Aurora World to  
23 ensure that the toys are produced to its specifications. In addition, all licensing follows a  
24 protocol to ensure that any licensed products are approved for character correctness.

25 18. Defendant Ty has created and is selling a line of animal plush characters  
26 called the "Beanie Boos." Attached hereto as **Exhibit I** are true and correct copies of  
27 images of the Ty's Beanie Boos product line, which look substantially similar to the  
28 YooHoo & Friends products. The Beanie Boos are not Aurora World products.

Aurora World did not create, manufacture, inspect, or package the Beanie Boos and

1 did not approve the Beanie Boos for sale and/or distribution.  
2

3 I declare under penalty of perjury under the laws of the United States of America  
4 that the foregoing is true and correct.

5 Executed on November 18, 2009 in Pico Rivera, CA.

6 Monica Fitzhugh  
7 Monica Fitzhugh  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA,  
COUNTY OF LOS ANGELES:**

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is **2450 Colorado Avenue, Suite 400E, Santa Monica, CA 90404.**

On November 19, 2009, I served copies of **DECLARATION OF MONICA FITZHUGH IN SUPPORT OF AURORA WORLD, INC.'S MOTION FOR PRELIMINARY INJUNCTION** on the interested parties in this action by placing the true copy thereof, enclosed in a sealed envelope, postage prepaid, addressed as follows:

DONNA M SNOPEK  
280 CHESTNUT AVE.  
WESTMONT, IL 60559

James P. White  
Husch Blackwell Sanders Welsh & Katz,  
LLP  
120 South Riverside Plaza, Suite 2200  
Chicago, IL 60606-3912

☒ **(BY ELECTRONIC MAIL)**

On the below date prior to 5:00 p.m. PST, I transmitted the foregoing document(s) by electronic mail, and the transmission was reported as complete and without error. A true and correct copy of the electronic transmission is attached to this declaration. This method of service was made pursuant to the agreement of counsel.

☒ **(BY PERSONAL SERVICE)**

I caused to be delivered such envelope by hand to the addressee noted above. Executed on November 19, 2009, at Santa Monica, California.

☒ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct, and that I am employed at the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 19, 2009, at Santa Monica, California.

  
**ALMA R. RINCON**